Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of	)	FCC 95-159
	)	
Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and the 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool	)	PR Docket No. 89-553
	)	
Implementation of Section 309(j) of the Communications Act - Competitive Bidding	)	PP Docket No. 93-253
	)	
Implementation of Sections 3(n) and 322 of the Communications Act	)	GN Docket No. 93-252

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COMMENTS ON SECOND REPORT AND ORDER AND SECOND FURTHER NOTICE OF PROPOSED RULEMAKING AND PROPOSAL FOR THE CREATION OF A TELECOMMUNICATIONS DEVELOPMENT FUND TO FINANCE INVOLVEMENT BY SMALL BUSINESSES IN THE TELECOMMUNICATIONS INDUSTRY

McManimon & Scotland
1275 Pennsylvania Avenue, N.W., Suite 500
Washington, D.C. 20004
(202) 638-3100

Counsel for the National Paging & Personal Communications Association (NPPCA) and the PCS Fund Members:
1. Atlantic Energy
2. CalCell
3. DCR Communications, Inc.
4. Essence Communications, Inc.
5. Minco PCS
6. PCS 2000
7. Southern Communications

Also in support:
1. Minority Media and Telecommunications Council
2. Communications Task Force
3. National Institute of Communications & Education (NICE)

Thomas A. Hart, Jr.
Michael Heningburg, Jr.

May 24, 1995

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To: The Commission

COMMENTS ON SECOND REPORT AND ORDER AND SECOND FURTHER NOTICE OF PROPOSED RULEMAKING AND PROPOSAL FOR THE CREATION OF A TELECOMMUNICATIONS DEVELOPMENT FUND TO FINANCE INVOLVEMENT BY SMALL BUSINESSES IN THE TELECOMMUNICATIONS INDUSTRY

The parties set forth below, through counsel, and those in support of such, hereby submit these comments on auction rules for the licensing of the 900 MHz Specialized Mobile Radio ("SMR") service, which also have broad implications for the PCS broadband C Block auction scheduled for August 2, 1995, as well as all subsequent FCC auctions of telecommunications license spectrum. This proposal outlines the purpose and goals of the Telecommunications Development Fund (the "TDF"). The goal of the TDF is to act as a race-neutral resource for the financing of "small businesses" in the telecommunications industry. Further, its submission is because of the pending telecommunications reform legislation and the need for greater governmental efficiency.

These comments are made on the Second Report and Order and Second Further Notice of Proposed Rulemaking. The 900 MHz SMR band will be divided into 20 ten-channel blocks in each of 51 service areas based on Major Trading Areas ("MTA"). Each MTA license will give the licensee the right to operate throughout the MTA on the designated channels except where a co-channel incumbent licensee already is operating. MTA licensees will also be allowed to aggregate multiple blocks within an MTA and to aggregate blocks geographically in multiple MTA's.

These comments are specifically to address the financial obstacles facing small businesses competing in the SMR auctions. There is a belief at the FCC that there will be significant participation in this auction by small businesses, including minority and women-owned businesses. As such, the FCC has created bidding preferences, but the FCC has tentatively decided not to have an "entrepreneurs block". Even with bidding preferences, small businesses will face the same difficulties in accessing adequate capital. The FCC believes that the 900 MHz service will not present the same financing obstacles as the more costly spectrum-based service like PCS. Nevertheless, there are no provisions for the capital requirements of small businesses after the auction, when they must utilize funds for the costs associated with acquisition, construction, and operation of the 900 MHz MTA licenses.

Due to fact the primary participants in the SMR auction will be small businesses, they are the intended beneficiaries of this filing. The TDF could be utilized to benefit small businesses participating in the SMR auction, and small businesses participating in the upcoming C Block auction. The C Block auction is focused on herein because it is the first opportunity to have fund the TDF funded, and thereafter its adoption would benefit small business participants in the SMR auction as well. Herein, we offer two independent proposals for the funding of small business through the TDF.

The first proposal involves the FCC securing legislative approval to place auction deposits in interest bearing accounts. Currently, the auction deposit funds are held in non-interest bearing accounts at the U.S. Treasury during the period of months in which any given auction is held by the FCC. The combined lost interest income to date for the three auctions mentioned herein, the Narrowband Nationwide PCS, Narrowband Regional PCS, and the Broadband PCS is approximately $8,578,454 (based on simple interest at a 5% per annum money market rate), and would increase to a much more significant figure with the C Block auction and the planned subsequent FCC auctions.

The second proposal involves allocating a small percentage of the C Block auction proceeds and using them to fund the TDF. Although both proposals would be innovations for the FCC, similar proposals are being used by the federal government in other areas, described more fully herein.

Balancing the budget is one of the top priorities of the federal government. We recognize that in times of austerity, the federal government cannot afford to have under-utilized assets, and the TDF is a program that would benefit small businesses without the need for appropriations. That interest, along with a percentage of the auction proceeds should be reinvested in our country. As we enter the next millennia, the most appropriate place for that funding is in our telecommunications infrastructure. The TDF is a way for the federal government to further its policy goal of universal access to the information superhighway. Small businesses are worthwhile candidates for a portion of that funding. An investment in small businesses will result in new, well-paying, permanent employment, competition, and investment, benefitting our national economy.

1. Background

For nearly twenty years the federal government has developed rules and regulations to diversify the ownership of mass media and telecommunications properties in the United States. It has instituted a number of policies to increase the opportunities for women, minorities and small businesses to own radio, television, cable, personal communications and other telecommunications services. These programs have included providing comparative hearing preferences granting distress sales, tax certificates and bidding credits. The programs have been moderately successful at increasing the level of minority, women and small business ownership of FCC licenses. However, these programs, which have been ultimately designed to create financial incentives to attract investors and lenders to these new companies, have not substantially reduced the institutional barriers present in the capital markets.

The information superhighway and the new technologies that will become available through the national information infrastructure are extremely capital intensive. Therefore, the need to develop additional methods for small businesses to access capital is present now more than ever. The expenses include purchasing FCC licenses, as well as the greater expense of building the infrastructure necessary to activate the licenses.

The House Small Business Subcommittee held formal hearings last year on the need to ensure adequate financing for small businesses to meaningfully compete in the telecommunications industry. Thus, capital access for small businesses is of paramount importance and it is critical to ensure that adequate funding is available for small business participation in the telecommunications industry.

The difficulty in accessing capital was acknowledged in a recent finding by Congress when it mandated that the FCC "promote economic opportunity and competition to ensure that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women, collectively known as designated entities ("DEs"). 47 U.S.C. § 309(j)(3)(B). Additionally, the Congress was well aware that DEs have not had adequate access to capital, and in the legislative history accompanying the FCC grant of authority to conduct auctions it states generally that the FCC "must promote economic opportunity and competition". See H.R. Rep. No. 111, 103rd Cong. 1st. Sess. 254 (1993). With regard to capital, Congress made specific findings in the Small Business Credit and Business Opportunity Enhancement Act of 1992, that "small business concerns, which represent higher degrees of risk in financial markets than do large businesses, are experiencing increased difficulties in obtaining credit." Small Business Credit and Business Opportunity Enhancement Act of 1992, § 331(a)(3), Pub. Law 102-366, Sept. 4, 1992. Acknowledging this financial need, Congress endeavored to "ensure that small business concerns are not negatively impacted and to give priority to passage of legislation and regulations that enhance the viability of small business concerns." Id. at § 331(b)(2)(3).

The bidding preferences in the entrepreneurs' block were designed by the FCC to help the DEs meaningfully compete and acquire ownership of PCS licenses. While the bidding preferences are helpful, they have failed to solve the capital access problems of small businesses. The problem remains and intensifies once the new licensees actually have acquired PCS licenses. The build-out of the PCS infrastructure is the most expensive part of this process. The FCC and Congress simply have not addressed the institutional impediments small businesses face once the auction is over. There are no financing preferences available with financial institutions or venture capital companies for small businesses. As a result, the funding options for small businesses are extremely limited, even though it has been determined that their participation will lead to enhanced competition, to the benefit of our economy.

Although many barriers to entry exist in the telecommunications industry, the primary obstacle for small businesses is their inability to access adequate capital. This year Congress held hearings and informal closed sessions to design ways for small business to stimulate and attract capital for telecommunications business opportunities. Specifically, Congressman Ed Towns held an informal closed session with telecommunications industry leaders and financiers "to discuss methods for small business entrepreneurs to access capital markets for telecommunications investment opportunities. This issue has become one of considerable importance, due to the introduction of the spectrum auction process, and the staggering cost associated with capital investments in the National Information Infrastructure." Congressman

Ed Town's January 27, 1995 letter for Telecommunications Finance Breakfast on February 9, 1995.

The hearing and informal sessions contributed to the House Subcommittee on Telecommunications and Finance (the "House Subcommittee") adopting, by a twenty to two voice vote, an Amendment to the Amendment in the Nature of a Substitute to H.R. 1555, offered by Congressman Rush (the "Rush Amendment", Attached as "Attachment A") in Section 249, "Market Entry Barriers", which under subheading (a) "Elimination of Barriers", reiterates the concerns of the 103rd Congress, encouraging diversity in FCC license ownership. In the Rush Amendment, the House Subcommittee proposes that the FCC "complete a proceeding for the purpose of identifying and eliminating, by regulations pursuant to its authority under this Act, market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services, or in the provision of parts or services, or in the provision of parts or services to providers of telecommunications services and information services." Id. at § 249(a). Additionally, under Section (b) "National Policy", "in carrying out subsection (a), the FCC shall seek to promote the policies and purposes of this Act favoring diversity of points of view, vigorous economic competition, technological advancement, and promotion of the public interest, convenience, and necessity." Id. at § 249(b). Thus, the Rush Amendment recognizes the importance of diversity in the FCC licensees, and the benefits of such, competition and technological innovation. However, the Rush Amendment fails to address the inadequate access to capital faced by small businesses, and without adequate capital access there can never be sustained meaningful competition.

Despite the foregoing efforts of the Congress and the FCC, the auctions are approaching and small businesses are not adequately capitalized. The policies set forth below could aid small businesses as they prepare for the auctions, and allow them to bid more aggressively, realizing that there are additional funding sources for the build-out.

2. Proposal for Use of Escrow Interest to Fund TDF

The magnitude of the spectrum expenses in the telecommunications industry was recently exemplified by the billion dollar check presented to President Clinton after the most recent PCS auctions. The PCS auctions have generated over $10 billion for the federal government. The total amount bid during the A and B Block MTA auctions in December, 1994 alone was over a $7 billion. The upcoming C Block BTA auction is expected to generate an additional $3 billion. During the above auctions, hundreds of millions of dollars were held in non-interest bearing accounts, which did not earn any interest for the months of the auction.

Currently, the FCC places the bidders' deposits with the U.S. Treasury, which holds them in a non-interest bearing account. In order for the "bidders" deposits to be maintained in an interest bearing account, the FCC would be required to obtain legislative approval. Proposed legislative language is attached in "Attachment B".

The placement of the bidders' deposits in an interest bearing account provides a basis for the significant amount of interest income that could derived from such a change in policy. Such interest has not accrued thus far, because the FCC has not been able to secure legislative approval to place the bidders' deposits in interest bearing accounts. During the twenty day Narrowband Nationwide PCS auction, in the month of July, 1994, approximately $30,801,000 was on deposit in a non-interest bearing account with the U.S. Treasury. During the

Narrowband Regional PCS auction, which was from October 5, 1994 to November 14, 1994, approximately $13,935,651 was on deposit in a non-interest bearing account with the U.S. Treasury. During the Broadband PCS auction, from November 18, 1994 to March 12, 1995, approximately $522,339,935 was on deposit in a non-interest bearing account with the U.S. Treasury. Based on simple interest, at a money market rate of 5% per annum, the combined lost interest of these three auctions could be approximated at $8,578,454. In this period of budgetary tightening, our nation's telecommunications infrastructure cannot afford to be "short-changed" by foregoing the opportunity to put the proceeds of the accrued interest back into our country via loans to small businesses.

This policy fails to utilize a tremendous financial resource during this difficult budgetary period. The interest generated from such large sums could be truly significant if it was used as initial capital for the long-term financing of small businesses in the telecommunications industry. Interest from the deposits could be transferred from the interest-bearing account to the TDF. Then, funds could be loaned from the TDF to newly licensed small businesses at market rate or below, to provide another source of financing as they begin their build-outs. They could use the loans to employ contractors, engineers, and purchase equipment for the build-out. This is also one means of further maximizing the amount bid for the PCS licenses, because participants will bear in mind that there is one more funding source available for the eventual build-out.

As an example, the first auction in which the deposits could be placed in an interest bearing account at the U.S Treasury is the C Block auction. In order to be eligible to participate in the C Block auction scheduled for August 2, 1995, bidders must submit an upfront payment by July 11, 1995. FCC Public Notice, Report No. AUC-95-05, Auction No. 5. The upfront payment is calculated on the basis of the maximum number of "MHz-pops" (defined as the product derived from multiplying the number of megahertz associated with a license by the population of the license's service area). Id. Each license in the C Block auction will cover 30 MHz, and the upfront payment for this auction is $0.015 per MHz pop. Id. For example, if an applicant wants to be eligible to bid in any single bidding round on licenses for BTA's with a total population of 750,000 persons, the applicant must submit an upfront payment of $337, 500 (30 MHz times 750,000 times $0.015). Id. Thus, with the large number of bidders expected to participate, and large populations being covered by the 493 licenses across the nation, a significant amount of money will be on deposit during the months of the auction that could be placed in an interest bearing account and used to fund the TDF.

3. Proposal for Use of a Small Percentage of Proceeds from the C BLOCK Auction to Fund TDF

Another funding mechanism for the TDF could be the use of a small percentage of the auction proceeds. Over the next twelve months, the FCC is set to hold numerous auctions for PCS and SMR licenses. The TDF could be established in a similar manner to a program administered by the Resolution Trust Corporation (the "RTC"). The RTC sold properties in its capacity as a receiver or conservator. The commonality arises between the TDF and the RTC programs because a portion of the borrower financing is controlled by the federal government. 12 U.S.C.A § 114a(b)(1)(A). The RTC received funds from the sale of RTC properties which it thereafter used to provide financing to purchasers. The FCC could use auction proceeds to finance the TDF.

In order to facilitate the purchase of RTC minority-owned properties by other minorities, the Minority Interim Capital Assistance Program ("MIPC") was enacted on January 30, 1990, pursuant to the "Interim Statement of Policy Regarding Resolutions of Minority-Owned Depository Institutions." Id. at (u)(1). This policy recognizes the importance of maintaining diverse ownership of financial institutions and the financing required for such. Further, it utilized funds received by the federal government from the sales of RTC properties, and thereafter loaned them to provide financing to minorities for the acquisition of RTC minority-owned properties.

The MIPC was designed to afford minorities the opportunity to acquire RTC properties and the financing necessary to make that goal a reality. The MIPC has a period for repayment of capital assistance which shall not be less than two years. Id. at (u)(3). The rate of interest for the MIPC will not exceed the average cost of capital to the RTC. Id. at (u)(4).

In addition, under the MIPC, the RTC "shall provide assistance under such program for minority-owned depository institutions and minority investors for the acquisitions of any savings association for which the RTC has been appointed conservator or receiver and which, before such appointment, was not a minority-owned association, if the RTC has not received acceptable bids for the acquisition of such association without offering assistance." Id. at (u)(2). The MIPC program demonstrates that a federal government program which receives funding from sales can thereafter loan a portion of those proceeds for subsequent investments. This program acknowledges the difficulties small business owners face in acquiring capital, and actively addresses such concerns with capital assistance. The MIPC could be used as a model for the

TDF, and represents an example of the federal government's to support of such programs which diversify asset ownership.

4. **Other Successful Funding Models**

The private sector would also be encouraged to contribute to the TDF as well. A public/private partnership is an essential element for the long-term success of the TDF. A good model for this public/private partnership is Broadcap, which was originally funded by the broadcast industry.

The telcos are not opposed to allocating private resources for the advancement of public policy. For example, NYNEX is pursuing a plan whereby a special subsidy fund would be established to maintain affordable long-distance rates for depressed urban areas. NYNEX is requesting contributions for this efforts from the local Bell operating companies and the long distance carriers.

There are a number of examples of development banks being used to stimulate domestic and international economies. Domestically, the federal government uses development banks, small business investment corporations and traditional venture capital firms. President Clinton's fiscal year 1994 budget appropriates $60 million to fund the administration's community development banking initiative. There are a number of MESBIC's in the broadcast industry, but very few are sufficiently capitalized to provide meaningful financing for capital-intensive telecommunications ventures. Finally, traditional venture capital firms are not frequently available to small start-up companies owned and operated by women and minority entrepreneurs.

Internationally, U.S. participation in the World Bank and the four regional development banks is a cost-effective way to promote growth and policy reform in developing and transitioning economies. The operations of the multilateral development banks ("MDB") can be seen as one of the reasons behind the resurgence of growth in Latin America, a region where reform efforts were supported by over $60 billion in World Bank and Inter-American Development Bank lending over the last six years. Latin America is now the fastest growing market for U.S. exports. Perhaps the time has arrived for the U.S. to utilize domestic financial ingenuity to develop our own telecommunications infrastructure to ensure the public interest goal of universal access to the information superhighway in underserved urban and rural areas by providing financing opportunities to small businesses.

5. Management of the TDF

Loans from the TDF to small businesses could be administered on a race neutral basis, based on sophistication of the business plan, as well as on financial need and collateral. The TDF loans would be targeted, but not set aside, for small businesses participating in the telecommunications industry. Enactment of the TDF would foster diversity in the telecommunications industry in five ways, as more fully stated in "Attachment C". Obviously, the lending criteria would need to be more expansive than that stated herein.

Finally, the TDF could be used as a means to fund the technology build-out for underserved urban and rural areas, thereby serving the public interest goal of universal access to the information superhighway.

6. Conclusion

Congress thought it was important to have diversity of ownership because it fosters competition. Competition is critical to American capitalism, because it leads to innovation and the lowest possible pricing. As an example, we need only examine the technological innovations since the break-up of AT&T, and the price competitiveness of long distance rates. Additionally, Congress recognized the tremendous opportunity afforded by the telecommunications industry, and as a result wanted as many segments of our economy participating as possible. Diverse participation will lead to employment opportunities that might not otherwise present themselves. Nevertheless, simply acquiring the license is meaningless, if there is inadequate funding for the infrastructure build-out. Without adequate funding for their build-outs, small businesses and Congress will not achieve the synonymous goal of greater competition, despite bidding preferences.

The intent of Congress was not merely to have small businesses, including the DEs, acquire licenses, but instead to formulate innovative means for them to actively compete in the telecommunications industry. This is an opportunity for the FCC to go beyond bidding preferences, and to really aid the small businesses that will be new licensees in the more capital intensive portion of the PCS business, the build-out. This is an opportunity to further the policy goal of providing universal access to the information superhighway for the technologically underserved urban and rural areas of the nation.

In light of the general acceptance of the development fund concept and the universal recognition of the problems minority and women-owned firms and small businesses have in accessing capital in the capital intensive telecommunications industry, the time has come for the creation of a mechanism such as the Telecommunications Development Fund to ensure congressionally mandated competition in the next millennia. This proposal should be considered as part of the telecommunications reform that is now underway, and should be incorporated by reference in pending and ongoing FCC auction comments on rules and procedures.

Respectfully submitted,

Thomas A. Hart

Thomas A. Hart, Jr.
Michael Heningburg, Jr.
McManimon & Scotland
1275 Pennsylvania Avenue, N.W., Suite 500
Washington, D.C. 20004
(202) 638-3100

Counsel for the National Paging & Personal Communications Association (NPPCA) and the PCS Fund Members:

1. Atlantic Energy
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ATTACHMENT A

Amendment To the Amendment in the Nature of a Substitute to H.R. 1555 Offered By Mr. Rush of Illinois

[Small business market barriers]

(Page & line nos. refer to Committee Print of 5/15/95)

Page 39, after line 7, insert the following new section (and redesignate the succeeding sections and conform the table of contents accordingly):

"SEC. 249. MARKET ENTRY BARRIERS.

"(a) ELIMINATION OF BARRIERS.—Within 15 months after the date of enactment of this part, the Commission shall complete a proceeding for the purpose of identifying and eliminating, by regulations pursuant to its authority under this Act (other than this section), market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services, or in the provision of parts or services to providers of telecommunications services and information services.

"(b) NATIONAL POLICY.—In carrying out subsection (a), the Commission shall seek to promote the policies and purposes of this Act favoring diversity of points of view, vigorous economic competition, technological advancement, and promotion of the public interest, convenience, and necessity.

"(c) PERIODIC REVIEW.—Every 2 years following the completion of the proceeding required by subsection (a), the Commission shall review and report to Congress on—

"(1) any regulations prescribed to eliminate barriers within its jurisdiction that are identified under subsection (a) and that can be prescribed consistent with the public interest, convenience, and necessity; and

"(2) the statutory barriers identified under subsection (a) that the Commission recommends be eliminated, consistent with the public interest, convenience, and necessity.

Attachment B

Proposed Legislation for Enactment of the Telecommunications Development Fund

SEC. #. TELECOMMUNICATIONS DEVELOPMENT FUND

(a) ELIMINATION OF FINANCIAL BARRIERS.--Immediately upon enactment of this legislation, the Commission shall commence the process to establish a Telecommunications Development Fund for the purpose of eliminating the financial barriers faced by small businesses and entrepreneurs, when entering the telecommunications and information services industries. The Telecommunications Development Fund will provide long-term loans at market rate or below to small businesses and entrepreneurs participating in the telecommunications and information services industries.

(b) TELECOMMUNICATIONS DEVELOPMENT FUND.--47 U.S.C. § 309(j) is hereby amended to allow for the upfront payments or deposits of bidders to be placed in interest-bearing accounts with the U.S. Treasury Department for the duration of each respective Commission auction for telecommunications license spectrum hereafter. Upon the conclusion of each auction, the accrued interest from the U.S. Treasury interest-bearing accounts shall be transferred to the Telecommunications Development Fund, and thereafter it shall make loans at market rate or below to small businesses and entrepreneurs participating in the telecommunications and information services industries. The Telecommunications Development Fund may also be funded by the proceeds of a percentage of each Commission auction and from donations by private parties.

(c) NATIONAL POLICY.--In carrying out subsections (a) and (b), the Commission shall seek to promote the policy of providing an opportunity for small businesses and entrepreneurs to meaningfully compete in the telecommunications and information services industries.

Participation by small businesses and entrepreneurs in the telecommunications and information services industries will lead to enhanced economic competition, employment, technological advancements, and promotion of the public interest, convenience, and necessity.

Attachment C

The TDF would promote small business ownership of FCC licenses in five ways, providing small businesses with capital to which they heretofore have seldom had access:

1. Its investment decisions would include small business ownership as a primary decisional factor, accounting for at least 30% of the capital invested or loans made, subject to generally accepted prudent lending and investing criteria.

2. Capital flowing through the TDF would not be deemed attributable for the purpose of Section 310(b)(4) of the Act.

3. By its pooling mechanism, the Bank would reduce the transaction costs which prevent small and moderate sized amounts of alien capital from being invested in American media and thus ultimately being accessible by small business.

4. By its subdistribution mechanism, the TDF would enable large sized amounts of alien capital to be broken down into smaller sums small businesses often require for broadcast acquisitions.

5. The TDF would have the flexibility to make investments, to make loans, or to issue loan guarantees, thus maximizing its ability to harness private sector resources to achieve its business and social objectives.

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CERTIFICATE OF SERVICE

I, Michael Heningburg, Jr., an associate in the law firm of McManimon & Scotland do hereby certify that a copy of the attached "**COMMENTS ON SECOND REPORT AND ORDER AND SECOND FURTHER NOTICE OF PROPOSED RULEMAKING AND PROPOSAL FOR THE CREATION OF A TELECOMMUNICATIONS DEVELOPMENT FUND TO FINANCE INVOLVEMENT BY SMALL BUSINESSES IN TELECOMMUNICATIONS INDUSTRY**" was served this 24th day of May, 1995 to the following persons by hand(*), or by first class mail, postage prepaid:

Chairman Reed Hundt*
Federal Communications Commission
1919 "M" Street, NW, Rm. 814
Washington, DC 20554

Commissioner James H. Quello*
Federal Communications Commission
1919 "M" Street, NW - Rm 802
Washington, DC 20554

Commissioner Andrew C. Barrett*
Federal Communications Commission
1919 "M" Street, NW, Rm. 826
Washington, DC 20554

Karen Brinkman, Special Asst.*
Office of Commissioner Reed Hundt
Federal Communications Commission
1919 "M" Street, NW, Rm 814
Washington, DC 20554

Lauren J. Belvin, Sr. Legal Adv.*
Office of Comm. James H. Quello
Federal Communications Commission
1919 "M" Street, NW - Rm. 802
Washington, DC 20554

Lisa Smith, Senior Legal Advisor*
Office of Comm. Andrew Barrett
Federal Communications Commission
1919 "M" Street, NW - Rm. 826
Washington, DC 20554

Commissioner Rachelle Chong*
Federal Communications Commission
1919 "M" Street, NW - Rm. 832
Washington, DC 20554

Commissioner Susan Ness*
Federal Communications Commission
1919 "M" Street, NW - Rm. 832
Washington, DC 20554

Jill M. Luckett, Special Advisor*
Office of Commissioner Rachelle Chong
Federal Communications Commission
1919 "M" Street, NW - Rm. 844
Washington, DC 20554

William E. Kennard, General Counsel*
Office of General Counsel
Federal Communications Commission
1919 "M" Street, NW - Rm. 614
Washington, DC 20554

Christopher J. Wright, Deputy
General Counsel
Federal Communications Commission
1919 "M" Street, NW, Rm. 614
Washington, DC 20554

Jonathan Cohen
Office of Policy & Plans
Federal Communications Commission
1919 "M" Street, NW - Rm. 822
Washington, DC 20554

Mary P. Mangus, Legal Advisor
Office of Commissioner Susan Ness
Federal Communications Commissioner
1919 "M" Street, NW
Washington, DC 20554

Richard K. Welch, Legal Advisor*
Office of Com. Rachelle Chong
Federal Communications Commission
1919 "M" Street, NW - Rm. 832
Washington, DC 20554

Jane E. Mago, Senior Advisor*
Office of Comm. Rachelle Chong
Federal Communications Commission
1919 "M" Street, NW - Rm. 844
Washington, DC 20554

A. Richard Metzger, Jr., Deputy Chief
Common Carrier Bureau
Federal Communications Commission
1919 "M" Street, NW - Rm. 500
Washington, DC 20554

Donald Gips, Deputy Chief*
Office of Plans & Policy
Federal Communications Commission
1919 "M" Street, NW - Rm. 246
Washington, DC 20554

International Transcription Services
Federal Communications Commission
1919 "M" Street, NW - Rm. 246
Washington, DC 20554

Robert Pepper, Chief*
Office of Policy & Plans
Federal Communications Commission
1919 "M" Street, NW - Rm. 822
Washington, DC 20554

Michael Katz, Chief Economist*
Office of Policy & Plans
1919 "M" Street, NW - Rm. 822
Washington, DC 20554

David R. Siddall, Legal Advisor
Office of Commissioner Susan Ness
Federal Communications Commission
1919 "M" Street, NW - Rm. 832
Washington, DC 20554

Kathleen Wallman, Chief*
Common Carrier Bureau
Federal Communications Commission
1919 "M" Street, NW - Room 500
Washington, DC 20554

Gerald P. Vaughn, Deputy Chief*
Wireless Telecommunications Bureau
Federal Communications Commission
2025 "M" Street, NW - Rm. 5002
Washington, DC 20554

Regina Keeney, Chief*
Wireless Telecommunications Bureau
Federal Communications Commission
2025 "M" Street, NW - Rm. 5002
Washington, DC 20554

Jonathan D. Blake, Esq.
Kurt A. Wimmer, Esq.
Covington & Burling
1201 Pennsylvania Ave., NW
Post Office Box 7566
Washington, DC 20044
Counsel for American Personal Communications

William J. Franklin, Esq.
William J. Franklin, Chartered
1919 Pennsylvania Ave., NW
Ste. 300
Washington, DC 20006-3404
Counsel for Association of Independent Designated Entities

Kathleen Levitz
Deputy Bureau Chief
Common Carrier Bureau
Federal Communications Commission
1919 "M" Street, NW - Rm. 500
Washington, DC 20554

Ralph A. Haller, Deputy Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 "M" Street, NW - Rm. 5002
Washington, DC 20554

Ellen S. Deutsch
Jacqueline R. Kinney
Citizens Utilities Company
Post Office Box 340
8920 Emerald Park Dr. - Ste. C
Elk Grove, CA 95759-0340

John A. Malloy, General Counsel
Jill M. Foehrkolb, Dir. of Legal Affairs - Columbia PCS
201 N. Union Street, Ste. 410
Alexandria, VA 22314

Joe D. Edge, Esq.
Mark F. Dever, Esq.
Drinker, Biddle & Reath
901 - 15th Street, NW
Suite 900
Washington, DC 20005
Counsel for Cook Inlet Region, Inc.

Stephen G. Kraskin, Esq.
Sylvia Lesse, Esq.
Charles D. Cosson, Esq.
Kraskin & Associates
2120 "L" Street, NW - Suite 520
Washington, DC 20037
Counsel for EATELCORP, Inc. and Hicks and Ragland Engineering Company

Philip L. Verveer
Jennifer A. Donaldson
Wilkie Farr & Gallagher
Three Lafayette Centre
1155 - 21st Street, NW - Ste. 600
Washington, DC 20036-3384
Counsel for Cellular Telecommunications Industry Association

Kenneth R. Cole
Vice President
Century Telephone Enterprises, Inc.
100 Century Park Drive
Monroe, LA 71203

Anthony Williams*
Federal Communications Commission
2033 "M" Street, NW - Rm. 2050
Washington, DC 20554

Henry Solomon, Esq.
Amelia Brown, Esq.
Haley, Bader & Potts
4350 N. Fairfax Drive - Ste. 900
Arlington, VA 22203-1633

Mark J. Tauber, Esq.
Mark J. O'Connor, Esq.
Piper & Marbury
1200 - 19th Street, NW - 7th Floor
Washington, DC 20036
Counsel for Omnipoint Communications, Inc.

Gail L. Polivy
GTE Corp.
1850 "M" Street, NW, Ste. 1200
Washington, DC 20036

Thomas A. Karl
President
Karl Brothers, Inc.
Post Office Box 53040
Fairbanks, AK 99711

Regina Dorsey
Federal Communications Commission
1919 "M" Street, NW - Rm. 452
Washington, DC 20554

Thomas J. Casey, Esq.
Jay L. Birnbaum, Esq.
Skadden, Arps, Slate, Meagher & Floam
1440 New York Avenue, NW
Washington, DC 20005-2111
Counsel for Lehman Brothers

Joseph A. Belisle, Esq.
Karsten Amlie, Esq.
Leibowitz & Associates, PEA
One South East Third Ave.
Suite 1450
Miami, FL. 33131
Counsel for MasTec., Inc.

Cathleen A. Massey
Senior Regulatory Counsel
McCaw Cellular Communications, Inc.
1150 Connecticut Avenue, NW
Fourth Floor
Washington, DC 20554